

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2002-25-T - ORDER NO. 2002-219

MARCH 26, 2002

IN RE:	Application of Upward Endeavors, LLC d/b/a	)	ORDER APPROVING
	Two Men and A Truck of Greenville, 4	)	TRANSFER OF
	Airport Extension, Greenville, South Carolina	)	CERTIFICATE
	29607 for Approval, <i>nunc pro tunc</i> , of a	)	
	Transfer of Assets from Nellie O'Brien, Inc.,	)	
	(O'Brien) including O'Brien's Class E	)	
	Certificate of Public Convenience and	)	
	Necessity.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Upward Endeavors, LLC d/b/a Two Men and a Truck of Greenville, 4 Airport Extension, Greenville, South Carolina 29607 (Upward Endeavors or the Company) for approval, *nunc pro tunc*, of a transfer of assets from Nellie O'Brien, Inc. (O'Brien), including O'Brien's Class E Certificate of Public Convenience and Necessity issued on July 2, 1999.

Pursuant to the instructions of the Commission's Executive Director, the Company published a Notice of Filing one time in newspapers of general circulation. The Company furnished affidavits of publication proving publication. No Protests or Petitions to Intervene were received.

A hearing was held on this matter on March 6, 2002 at 10:30 AM in the Commission's hearing room with the Honorable William Saunders, Chairman, presiding. The Company was represented by John J. Pringle, Jr., Esquire. Upward Endeavors

presented the testimony of Bryan Feldman. The Commission Staff was represented by F. David Butler, General Counsel. The Commission Staff presented no witnesses.

Bryan Feldman, President of the Company, testified that he had worked extensively with Two Men and a Truck of Columbia and is now manager of that franchise. His current responsibilities include accounting, hiring, training, the maintenance of trucks, and attracting new business. He also stated that he had worked in virtually every aspect of the moving business. Feldman noted that the O'Brien franchise had been operating five trucks in the moving business. If the transfer is approved, Feldman states that he hopes to be running eight to nine trucks in the business.

With regard to personnel, Feldman states that he has fourteen mover-drivers, two office staff members, and other employees. Facilities-wise, Feldman states that his building holds office space, and an area for five to ten trucks, plus storage areas for boxes and supplies. Feldman discussed his insurance and safety arrangements, and lack of judgments against the Company. Feldman notes that his proposed rates are under the South Carolina Tariff Bureau Rates. In addition, Feldman noted that the Company is a 50-50 split between Feldman and his wife, and the Boyers, who own interests in both the Columbia and Augusta franchises of Two Men and a Truck.

Feldman also demonstrated with bills of lading twelve months continuous service prior to the date of the application. Further, Feldman showed evidence that there are one hundred twenty-seven Class E Certificates of Public Convenience and Necessity in existence for household goods movers, with sixty-four having state-wide authority.

Feldman also noted that at least three companies were owned by exactly the same persons.

Commission Regulation 103-135(4)(Supp. 2001) states that the Commission shall approve an application for sale or other transfer of a Certificate of Public Convenience and Necessity made under this section upon finding (1) that the sale will not adversely affect the service to the public under said certificate; (2) that the person acquiring said certificate or control thereof is fit, willing, and able to perform such service to the public under said certificate; and (3) that all services under said certificate have been continuously offered and reasonably provided to the public for a period of time not less than twelve months prior to the date of the filing of the application for sale. Further, the regulation states that no sale will be approved where such action would be destructive of competition or would create an unlawful monopoly. We believe that the applicant has met the criteria of the regulation, and that the transfer should be approved *nunc pro tunc*.

We do believe that the sale of the certificate to Upward Endeavors will not adversely affect the service to the public under said certificate. We think Feldman demonstrated the knowledge and experience to continue the movement of household goods in a manner consistent with the interests of the public. Second, Feldman showed that he is fit, willing, and able to perform such service to the public under the certificate. Feldman has experience in virtually every area of the household goods moving business. Further, he has the personnel and equipment needed to provide proper service under the certificate. In addition, through bills of lading, Feldman demonstrated the requisite twelve months of continuous service prior to the filing of the Application. Finally, we conclude

from the evidence that a transfer of the Nellie O'Brien certificate to Upward Endeavors would not be destructive of competition, nor would it create an unlawful monopoly, considering the number of certificates in force and the number of said certificates with statewide authority.

Because of the above-stated reasoning, it is hereby ordered that:

1. The transfer of the Class E Certificate of Nellie O'Brien, Inc. and other assets to Upward Endeavors, LLC d/b/a Two Men and a Truck of Greenville is hereby approved *nunc pro tunc*.

2. Upward Endeavors, LLC d/b/a Two Men and a Truck of Greenville shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Upward Endeavors, LLC d/b/a Two Men and a Truck of Greenville authorizing the motor carrier services granted herein.

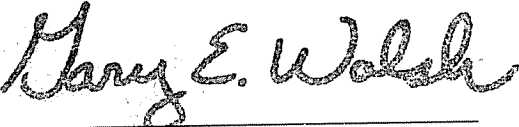
4. Prior to compliance with the above referenced requirements and receipt of a Certificate, the motor carrier services authorized herein may not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)